



**FAIR POLITICAL PRACTICES COMMISSION**

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**To:** Chair Ravel and Commissioners Casher, Eskovitz, Wasserman and Wynne

**From:** Zackery P. Morazzini, General Counsel  
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**Subject:** Legislative Update

**Date:** June 20, 2013

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As requested by the Commission at its May meeting, staff is providing recommendations for positions to be taken on four additional legislative bills. This report further includes a summary of other bills pending before the Legislature that would impact the Political Reform Act (the "Act"), including those bills the Commission has already taken a position on. Staff will provide recommendations for the last remaining four bills that would impact the Act at the next scheduled meeting as staff expects significant amendments to some of those bills.

**Ongoing Legislation – Staff Recommended Positions**

**SB 2 (Lieu and Yee)**

Existing Law

The Act provides for the comprehensive regulation of campaign financing by requiring the reporting of campaign contributions and expenditures, and imposing other reporting and recordkeeping requirements on campaign committees.

The Act also regulates advertisements, which are defined as any general or public advertisement that is authorized and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective office or a ballot measure. The Act places certain disclosure requirements on advertisements for or against any ballot measure, including that the advertisement disclose up to two persons who have made cumulative contributions of \$50,000 or more. The Act places more specific disclosure requirements on broadcast or mass mailing advertisements that are paid for by independent expenditures that support or oppose a candidate or ballot measure. In addition to other penalties imposed by the Act, a fine of up to triple the amount of the cost of an advertisement can be imposed on a person who violates the disclosure requirements for advertisements.

The Act regulates mass mailings, known as slate mailers that support or oppose multiple candidates or ballot measures for an election. The Act requires that each slate mailer identify the slate mailer organization, or committee primarily formed to support or oppose one or more ballot measures, that is sending the slate mailer. Slate mailers must contain other specified information in specified formatting. The Act requires that each candidate and each ballot measure proponent that has paid to appear in the slate mailer be designated by an asterisk.

The Act authorizes the Commission to perform discretionary investigations and audits with respect to campaign and lobbying reports, and statements that are filed with the Secretary of State. The Act also authorizes any person residing in the jurisdiction to sue for injunctive relief to prevent violations or compel compliance with the Act.

### Proposed Law

This bill would require that television, video, or audio broadcast advertisements that are authorized by a candidate include a specified disclosure statement made by the candidate. The bill would increase the maximum penalty for a violation of the advertisement provisions to six times the amount of the costs of the advertisement. The bill would also increase fine ceilings for other violations of the Act.

This bill would require that a candidate or ballot measure appearing in a slate mailer as a result of a payment made by a third party be designated by an “@” and would require the notice to voters included on a slate mailer be revised to describe this new requirement.

This bill would require that a slate mailer that is produced in a language other than English provide the required notice to voters in that same language. The bill would require that a slate mailer provide the notice in both English and another language if a substantial portion of a slate mailer is produced in the other language.

This bill would reduce the amount of time within which a ballot measure committee must reference itself as a committee for or against a numbered proposition to within ten days of the designation of the numerical order of propositions by the Secretary of State.

This bill would specify that the Commission may perform audits prior to the date of an election and prior to the date that a statement or report is required to be filed. The bill would authorize a person to challenge an audit by the Commission or any order resulting from an audit by seeking a writ of mandate, which would take priority over all other civil matters. The bill would specify that the Commission is authorized to seek an injunction to prevent a violation of or compel compliance with the Act.

The bill also states that it is the intent of the Legislature to enact legislation to establish a schedule with more frequent, but more regular, campaign statements that provide information when the public most needs it and when it is most useful for enforcement of the Act. However, this bill does not propose amendments to the Act to accomplish this goal.

Staff recommends the Commission support this bill because it furthers the purposes of the Act by requiring that candidates make disclosure statements on their own advertisements and increases disclosure on slate mailers by informing voters when a third party has paid for a candidate or ballot measure to appear on a slate mailer. Additionally, the bill provides the Commission with

audit and injunction authority, provisions that will assist the Commission in identifying serious violations of the Act and reach timely resolution of such issues. However, staff does not believe increasing the frequency of the filing of campaign statements is necessary at this time. Instead, staff believes better access to statements that are filed under existing schedules would better serve the public. Because this bill does not propose such amendments, staff recommends the Commission support this bill as written.

**Status: Assembly pending referral.**

**Staff Recommended Position: Support.**

**Fiscal Impact: Minor and absorbable.**

### **SB 3 (Yee and Lieu)**

#### Existing Law

The Act currently refers to contributions and independent expenditures made or received during the last 90 days before an election as “late contributions” and “late independent expenditures.” The Act currently refers to nonmonetary contributions as “in-kind contributions.” The Act requires the Secretary of State, in consultation with the Commission, to develop online and electronic filing processes for specified entities. The Act requires each committee to have a designated treasurer who is identified in the statement of organization. A committee may not make an expenditure without the authorization of the treasurer.

#### Proposed Law

The bill would revise the terms “late contribution” and “late independent expenditure” to “election-cycle contribution” and “election-cycle independent expenditure.” The bill would also replace the term “in-kind contribution” with “nonmonetary contribution.”

The bill would increase fines from \$10 per day to \$30 per day for campaign statements and reports that are filed late, not to exceed 150 percent of the cumulative amount stated in the late statement or \$1,000, whichever is greater.

The bill would require the Secretary of State to complete a feasibility study for an electronic filing system by December 31, 2014.

This bill would require treasurers for committees that have made cumulative contributions or expenditures in excess of \$250,000, to complete an online certification course, designed and administered by the Commission. The Commission would be allowed to charge a fee of up to \$50 for this course.

Staff believes that the treasurer training required to be developed by this bill would not be useful. The bill requires treasurers for committees that have made contributions or expenditures of \$250,000 to take special treasurer training. In staff’s experience, committees of that size generally hire well trained professional treasurers who are not in need of additional training that could be developed by staff. Moreover, it is difficult to estimate whether the authorized fee to be charged by the Commission would cover the costs incurred in developing and providing the training. Additionally, the Commission would need funding in advance to create the training.

Staff is neutral with regard to changing the terms “late contribution,” “late independent expenditure,” and “in-kind contribution” as proposed. Staff has been in the process of moving away from use of those first two terms in reports, instead referring to them as “24-hour Reports.” Staff would incur costs if these changes to the terms were made to the Act, as multiple regulations, manuals, forms, and fact sheets would have to be amended to reflect the changes. While Staff believes that a new electronic filing system is necessary, staff has no opinion on whether using the State’s resources to conduct a feasibility study is the best method for achieving that goal.

**Status: Assembly pending referral.**

**Staff Recommended Position: Neutral.**

**Fiscal Impact: \$137,960 for legal, technical assistance and technology costs.**

### **SB 26 (Correa)**

#### Existing Law

The Act regulates mass mailings known as slate mailers that support or oppose multiple candidates or ballot measures for an election. The Act requires that each slate mailer identify the slate mailer organization, or committee primarily formed to support or oppose one or more ballot measures, that is sending the slate mailer, and to contain other information in specified formatting. The Act also requires a notice to voters in a specified type and color or print consisting of a prescribed statement included on a side or surface of the slate mailer.

#### Proposed Law

This bill would change the font size for slate mailer name, street address, city, and disclaimer from 8pt. to 10 pt. These items would be required to be written in black ink against a solid white background. The disclaimer would be required to appear on each side or surface where any candidate or ballot measure has paid to appear, instead of the top or bottom of the front side or surface of a postcard mailer or insert.

Staff believes that this bill will provide greater disclosure to the public by making important information about the identity of the organization sending the mailer and whether a candidate or ballot measure has paid to appear in the mailer more noticeable and readable for the recipients.

**Status: Assembly Elections & Redistricting.**

**Staff Recommended Position: Support.**

**Fiscal Impact: Minor and absorbable.**

### **AB 1418 (Fong)**

#### Existing Law

Each campaign committee is required to file a statement of organization. For a campaign committee that does not support or oppose one or more candidates or ballot measures as its primary activity, the statement of organization must include, among other things, a brief description of the committee’s political activities. This includes whether it supports or opposes candidates or measures, and whether such candidates or measures have common characteristics, such as a political party affiliation. The Act requires a committee that is controlled by a candidate for partisan office to provide a statement indicating the political party with which the

candidate is affiliated. Campaign statements are required to be open for public inspection and reproduction on the Saturday preceding a statewide primary or general election at the Secretary of State, Registrar-Recorder of Los Angeles County, Registrar of Voters of San Diego County, and Registrar of Voters of the City and County of San Francisco.

#### Proposed Law

This bill would repeal the requirement that campaign statements be open for public inspection and reproduction on the Saturday preceding a statewide primary or general election at the Secretary of State, Registrar-Recorder of Los Angeles County, Registrar of Voters of San Diego County, and Registrar of Voters of the City and County of San Francisco.

This bill would require a committee that does not support or oppose one or more candidates as its primary activity to state on its statement of organization whether it supports or opposes candidates or measures and whether such candidates or measures have common characteristics, such as a political party “preference” instead of “affiliation.”

This bill would require committees controlled by a candidate for partisan office to indicate the political party the candidate “has disclosed a preference” for instead of “is affiliated” with. The bill would also require committees that are controlled by a candidate for “voter nominated office” to indicate the political party for which the candidate has disclosed a preference.

Staff has been informed that the reason for the elimination of the Saturday opening for campaign report inspection is because the public has not been so inspecting such records at those offices on that Saturday. Therefore, this requirement serves no useful purpose. Eliminating this requirement would help cut costs for the affected agencies. The other provisions would make minor changes that could result in voters obtaining more accurate information concerning the covered committees and those candidates, measures, or political parties they support.

**Status: Senate pending referral.**

**Staff Recommended Position: Neutral.**

**Fiscal Impact: Minor and absorbable.**

### **Ongoing Legislation – Positions Not Yet Adopted by Commission**

#### **SB 52 (Leno and Hill)**

##### Existing Law

The Act regulates advertisements, which are defined as any general or public advertisement that is authorized and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective office or a ballot measure. The Act places certain disclosure requirements on advertisements for or against any ballot measure, including that the advertisement disclose up to two persons who have made cumulative contributions of \$50,000 or more. The Act places more specific disclosure requirements on broadcast or mass mailing advertisements that are paid for by independent expenditures that support or oppose a candidate or ballot measure. In addition to other penalties imposed by the Act, a fine of up to triple the amount of the cost of an

advertisement can be imposed on a person who violates the disclosure requirements for advertisements.

The Act requires a person who makes a payment or promise of payment totaling \$50,000 or more for a communication that identifies, but does not advocate the election or defeat of, a candidate for elective state office, and that is disseminated within 45 days of an election, to file an online or electronic disclosure report with the Secretary of State within 48 hours.

### Proposed Law

This bill would define “Advertisement” to include electioneering communications and issue advocacy advertisements.

The bill would define “issue advocacy advertisement” as an advertisement that clearly refers to and reflects a view on the subject matter, description, or name of a pending legislative action, administrative action, or one or more ballot measures and does any of the following:

- (1) Can only be interpreted as an appeal for the recipient of the advertisement to take action by contacting an employee or elected official of the state government or any local government or encouraging others to contact those persons.
- (2) Refers to a pending legislative action and is disseminated, broadcast, or otherwise communicated within 60 days of the end of the legislative session.
- (3) Refers to one or more ballot measures and is disseminated, broadcast, or otherwise communicated within the 120 days of the election concerning that measure or measures.

The bill would impose new disclosure statement requirements for:

- (1) Radio advertisements and prerecorded telephonic messages – these advertisements would be required to have a disclosure at the end of the advertisement that states the committee’s name and the three largest contributors for the advertisement that have met or exceeded a disclosure threshold of \$10,000 or more for statewide candidates or measurers or \$2,000 or more for local candidates or measures unless they are already identified in the advertisement.
- (2) Television or video advertisements – these advertisements would be required to have a disclosure at the beginning of the advertisement on a solid black background that covers the entire bottom one-third of the display for a minimum of six seconds listing the three largest contributors who have met or exceeded a disclosure threshold of \$10,000 or more for statewide candidates or measurers or \$2,000 or more for local candidates or measures along with a website address to the committee’s Internet Disclosure Website and committee name.
- (3) Print advertisements other than slate mailers – these advertisements would be required to have a disclosure area on the largest page of the mass mailing or print advertisement that has a solid white background with black writing in a box that discloses the top three funders of the ad that have met or exceeded a disclosure threshold of \$10,000 or more for statewide candidates or measurers or \$2,000 or more for local candidates or measures. If the advertisement is four inches tall or less only the top two contributors must be disclosed and if the advertisement is three inches tall or less only the top funder would be required to be disclosed on the advertisement. A link to an Internet Disclosure Website and the committee’s name would also be required.

The bill will require committees that have received contributions meeting or exceeding the disclosure threshold of \$10,000 or more for statewide candidates or measurers or \$2,000 or more for local candidates or measures to maintain an Internet Disclosure Website that lists the Committees top 10 donors, and that also have a link to a page with all of the committees donors who have met or exceeded the disclosure thresholds.

The bill would provide authority to the Commission to promulgate regulations to require disclosures on all forms of political advertisements including electronic media advertisements and billboards.

The bill would require a person who makes a payment or promise of payment of \$10,000 or more for a communication that identifies but does not expressly advocate the election or defeat of a candidate for elective state office that is disseminated between 120 days before the primary or special election and the date of the general or run-off election to file an online or electronic report with the Secretary of State within 48 hours.

**Status: Assembly pending referral.**

**Fiscal Impact: \$363,000.**

### **SB 268 (Gaines)**

#### Existing Law

The Act requires candidates and committees to file specified campaign finance reports, including semiannual statements, preelection statements, supplemental preelection statements, and late contribution reports.

#### Proposed Law

This bill would repeal the requirement that candidates and committees file semiannual, preelection, supplemental preelection, and late contribution campaign reports, and would instead require that a candidate or committee who makes or receives a contribution of \$100 or more or makes an expenditure of \$100 or more to report that contribution or expenditure to specified filing officers within 24 hours. Candidates or committees that are required to report to the Secretary of State would be required to report contributions and expenditures online or by electronic transmission only.

**Status: Assembly Elections & Redistricting.**

**Fiscal Impact: None completed at this time.**

### **SB 477 (Steinberg)**

This bill does not yet contain language amending the Act but states that the intent of the Legislature is to enact legislation that would prohibit a political campaign committee from accepting large contributions for the purpose of supporting the qualification of a statewide

initiative ballot measure until the committee has first received a significant number of small individual contributions, thereby demonstrating a sufficient degree of public support for the proposed measure.

**Status: Senate Rules.**

**Fiscal Impact: None completed at this time.**

### **AB 510 (Ammiano)**

#### Existing Law

The Act currently requires a committee that makes an expenditure of \$5,000 or more to an individual for his or her appearance in an advertisement to support or oppose the qualification, passage, or defeat of a ballot measure to file a report within ten days, and to include a statement in the advertisement that notifies viewers that the individual was paid to appear in the advertisement.

#### Proposed Law

This bill would require the same reporting and disclosure when a committee makes an expenditure of any amount to an individual that appears in the advertisement if the advertisements state that the individual is a practitioner or a member of a profession having expertise or specialized knowledge relating to the subject of the measure.

**Status: Assembly Elections & Redistricting.**

**Fiscal Impact: Minor and absorbable.**

### **Ongoing Legislation – Positions Adopted by Commission**

### **SB 27 (Correa)**

#### Existing Law

The Act provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures. Regulations previously adopted by the Commission require nonprofit organizations to disclose the sources of funds behind their campaign expenditures when donors have made donations to the organization in response to a solicitation that indicates the organization's intent to use such funds to make contributions or expenditures, or when such organizations have previously made contributions or independent expenditures from their general treasuries of \$1,000 or more during the calendar year, or the previous four years.

#### Proposed Law

This bill will revise the definition of contribution in the Act to include payments by a donor who, at the time of making the payment, knows or has reason to know that the payment will be used to make contributions or expenditures in California. The bill would implement presumptions as to when a donor would have reason to know their donation will be used to make contributions or expenditures. The first presumption would require multipurpose organizations that receive



donations and use them to make contributions or expenditures of \$1,000 or more in the calendar year or preceding four years. The second presumption would apply when a multipurpose organization has made contributions or expenditures of \$500,000 or more in the calendar year in California. The third presumption would apply when a multipurpose organization has disclosed contributions or expenditures to support or oppose candidates or ballot measures, or for issue advocacy activities, in this state on any publicly available annual or periodic report of its activities. The last presumption would apply when a multipurpose organization has a sponsored committee registered with the Secretary of State. Once the presumption attaches, disclosure of the donor information will be required unless the organization can affirmatively rebut the presumption. For example, the presumption could be rebutted by evidence that the donor gave money to the organization in response to a solicitation that affirmatively stated that no money from the donation would be used for political purposes.

This bill would also require ballot measure committees and candidate committees that raise \$1,000,000 or more for an election to maintain an accurate list of the committee's top 10 contributors, which would be posted on the FPPC's Internet website and the Committee's Internet website.

Staff believes the amendments proposed by this bill will result in more timely and accurate disclosure of the identity of the actual source of funds being spent on California elections, rather than just the name of a multipurpose organization which often provides little, and sometimes misleading, information about the interest behind the expenditure. Staff believes this bill is important because it would increase accountability for those who attempt to avoid disclosure of their identities by channeling funds used to influence California elections through other committees or nonprofits. By establishing specific rebuttable presumptions that donors have reason to know their donations may be used for contributions or expenditures in California elections, this bill would increase disclosure of important information regarding the true source of the money and the true interest behind it.

The Supreme Court has repeatedly held that the identity of the source of funds spent on elections provides valuable information to voters, and staff believes that timely pre-election disclosure of such information increases its value to voters when it matters most.

**Status: In Assembly pending referral.**

**Commission Adopted Position: Sponsor.**

**Fiscal Impact: Minor and absorbable. (\$10,000)**

### **AB 45 (Dickinson)**

#### **Existing Law**

The Act currently defines a "committee" as any person or combination of persons who receive contributions or make independent expenditures of \$1,000 or more in a calendar year. The Act requires committees to file campaign statements and requires that those statements disclose certain information about contributors who have made aggregate contributions of \$100 or more.

Regulations previously adopted by the Commission require nonprofit organizations to disclose the sources of funds behind their campaign expenditures when donors have made donations to the organization in response to a solicitation that indicates the organization's intent to use such

funds to make contributions or expenditures, or when such organizations have previously made contributions or independent expenditures from their general treasuries of \$1,000 or more during the calendar year, or the previous four years.

The Act currently defines the term “candidate” as including an officeholder who is the subject of a recall election. A candidate retains that status until the status is terminated. Candidate status requires individuals to continue to file campaign reports and provide disclosure to the public on campaign activities for both their main committee and other committees with which they may be involved. Candidates are prohibited from controlling committees that make independent expenditures and are prohibited from making contributions to committees that make independent expenditures to support or oppose other candidates. By regulation, the Commission has said that a candidate retains his or her status as a candidate until he or she leaves office.

The Act also imposes specified duties on a filing officer with respect to reports and statements filed with that filing officer. The Act requires that certain campaign statements be filed with the Secretary of State online or electronically. Statements that are filed electronically must also be filed in paper format.

### Proposed Law

This bill would increase the monetary threshold of contributions or independent expenditures that qualify a person or combination of persons as a committee from \$1,000 to \$2,000.

The bill would authorize the Commission to adopt regulations establishing reporting thresholds for disclosure of contributions and expenditures for a committee primarily formed to support or oppose a statewide ballot measure to a minimum of \$500 and a maximum of \$2,500.

The bill would revise the definition of “contribution” to include payments made to multipurpose organizations by a person who “knows or has reason to know” that a payment will be used to make a contribution or independent expenditure. The bill would impose a presumption that a donor has “reason to know” (a) if the recipient organization has made aggregate contributions or expenditures of \$2,000 or more within the calendar year, or the preceding four years, or (b) if the donor’s payment is \$50,000 or more, is made in the six months preceding the election, and the multipurpose organization makes a contribution or an independent expenditure of \$50,000 or more within the six months prior to the election. Such donors would have to be identified and reported by the organization in accordance with existing reporting regulations.

This bill would revise the definition of “candidate” to include any officeholder, regardless of whether he or she is the subject of a recall election, and provides that a candidate retains that status until the time that he or she leaves office and the status is terminated. This change will make clear that officeholders who terminate their campaign committees will continue to retain their status as a candidate until they actually leave office, so that while they remain in office they are prohibited from controlling committees that make independent expenditures and prohibited from making contributions to committees that make independent expenditures to support or oppose other candidates.

Additionally, the bill would require filing officers to immediately affix a date stamp to each statement of economic interest. The bill would also require the Secretary of State to make

campaign and lobbying statements and reports that are filed with the Secretary of State available to the Commission upon request.

The bill would specify that the Commission is authorized to seek an injunction to prevent a violation of the Act or compel compliance with the Act.

**Status: Assembly Elections & Redistricting.**

**Commission Adopted Position: Support.**

**Fiscal Impact: Minor and absorbable.**

### **AB 552 (Fong)**

#### Existing Law

The Act currently requires the Commission to commence a civil action and obtain a judgment in a superior court to collect any unpaid fines imposed under the Act.

#### Proposed Law

This bill would authorize the Commission to apply to the clerk of the superior court for a judgment enforcing a monetary penalty or fee, and would require the clerk of the court to enter a judgment immediately in conformity with the application under specified circumstances, rather than requiring the Commission to institute a formal civil action.

Staff believes the amendments proposed by this bill would increase efficiencies in the Commission's Enforcement Division by simplifying the procedure for collecting unpaid penalties. Rather than having to proceed with a full civil action to judgment in order to collect, this bill would allow the Commission to take advantage of a streamlined procedure for obtaining a judgment. The procedure established by this bill for the collection of unpaid penalties is similar to procedures that currently exist for a number of other government agencies, including the Department of Conservation (pursuant to Section 14591.5 of the Public Resources Code) and the Department of Forestry and Fire Protection (pursuant to Section 4601.3 of the Public Resources Code).

**Status: Senate pending referral.**

**Commission Adopted Position: Sponsor.**

**Fiscal Impact: Minor and absorbable.**

### **AB 800 (Gordon)**

#### Existing Law

The Act defines a "controlled committee" as a committee that is controlled directly or indirectly by a candidate or state measure proponent, or that acts jointly with a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he or she, or his or her agent or any other committee he or she controls, has a significant influence on the actions or decisions of the committee. The Act requires an agent or independent contractor to make known to the candidate or committee all information that is subject to campaign reporting requirements.

“Surplus campaign funds” are defined in the Act as funds that are under the control of a former candidate or former elected officer as of the date of leaving office, or the end of the postelection reporting period following the defeat of the candidate for elective office, whichever occurs last. The purposes for which surplus campaign funds may be used are restricted.

The Act requires the Franchise Tax Board (the “FTB”), to periodically prepare reports regarding its audit and investigations under the Act and send them to the Commission, the Secretary of State and the Attorney General. These audit reports must be completed within one year.

The Act generally prohibits the commencement of an audit or investigation of a candidate, controlled committee, or committee primarily supporting or opposing a candidate or a measure in connection with a report or statement required by specified provisions of the Act until after the last date for filing the first report or statement following the general, the runoff, or a special election for the office for which the candidate ran, or following the election at which the measure was adopted or defeated.

### Proposed Law

This bill would establish a presumption that a committee is significantly influenced by a candidate, and thus a “controlled committee,” if the candidate is a voting member of the committee’s governing body, the candidate or his or her agent is involved in the decision-making of the committee or the development or implementation of the committee’s campaign strategy, or the candidate, or his or her agent, is substantially involved in directing the day to day operations of the committee.

This bill would require a subcontractor who provides goods or services to or for the benefit of a candidate or committee to make known to the agent or independent contractor all of the information subject to the reporting requirements of the Act and would require this information be disclosed by a subagent or independent contractor to the agent, independent contractor, candidate, or committee no later than three working days prior to the time the campaign statement reporting the expenditure is required to be filed. Late contributions or late independent expenditures must be reported to the candidate or committee within 24 hours of the time it is made.

This bill would increase the time at which campaign funds become surplus by 90 days following either the officer leaving elective office or the end of the postelection reporting period following the defeat of the candidate, whichever occurs last.

This bill would extend one-year deadline for the FTB to complete audit reports for audits conducted on a random basis to two years, and would allow the Commission and the FTB (at the direction of the Commission), to audit any record required to be maintained under the Act in order to ensure compliance with the Act prior to an election, even if the record or report is one that has not yet been filed. The one year deadline has proven counter-productive as it forces the FTB to work on minor audits and not have the discretion to adjust their workload to more rapidly work on major issues.

Finally, the bill would authorize the Commission to seek injunctive relief in a superior court to compel disclosure consistent with the Act and require a court grant expedited review of an action filed pursuant to this provision.

**Status: Senate pending referral.**  
**Commission Adopted Position: Support.**  
**Fiscal Impact: Minor and absorbable.**

### **AB 914 (Gordon)**

#### Existing Law

The Act provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures by nonprofit organizations, and imposes other reporting and recordkeeping requirements on campaign committees. Regulations previously adopted by the Commission require nonprofit organizations such as charities (501(c)(3)) and social welfare organizations (501(c)(4)) to disclose the sources of funds behind their campaign expenditures when donors have made donations to the organization in response to a solicitation that indicates the organization's intent to use such funds to make campaign contributions or expenditures or when such organizations have previously made contributions or independent expenditures from their general treasuries of \$1,000 or more during the calendar year, or the previous four years, in California.

#### Proposed Law

This bill would require nonprofit organizations that make campaign contributions, expenditures or independent expenditures in California to file an annual report with the Commission, disclosing the total percentage of their funds that were used to make contributions, expenditures and independent expenditures during each fiscal year the entity spends at least \$50,000 on such activities. If the total amount spent on such activities exceeds 10 percent of the entity's total expenses during the fiscal year, the entity would be required to disclose information related to each contribution, expenditure and independent expenditure, including the amount, date, name and address of the recipient, and a description of the purpose for the contribution, expenditure or independent expenditure. The names of each donor to the nonprofit organization of \$10,000 or more would also have to be disclosed, unless the organization makes all of its campaign expenditures from a separate account used for political expenditures. If all campaign contributions, expenditures and independent expenditures are made from a separate account, only donors whose funds were deposited into the separate account would be required to be disclosed. The bill would allow exemptions from disclosing the identities of donors in limited circumstances.

Staff believes this bill would provide the public with much needed disclosure that in some cases can be nonexistent. Since the Supreme Court decided *Citizens United* in 2010, there has been an unprecedented amount of campaign activity conducted by nonprofit organizations. Many of these organizations receive large sums of money from individuals and corporations and, under Federal law, are not required to disclose their donors. In the last election, a nonprofit organization contributed a large sum of money, which it apparently obtained from a number of other nonprofit organizations, to a committee in California prior to the election for use on ballot measure campaigns. Only the nonprofit in California was disclosed as the source of the funds. The FPPC brought legal action against them seeking to obtain the true source of the funds. This occurred just a few days before the election. This legislation would simply require nonprofits to know who their donors are and to disclose who is actually funding their campaign activities. This basic disclosure also would provide the public and other government agencies with valuable

information regarding the amount of campaign activity conducted by the nonprofit in relation to its activities as whole.

**Status: Senate pending referral.**

**Commission Adopted Position: Sponsor.**

**Fiscal Impact: Minor and absorbable.**

### **AB 1090 (Fong)**

#### Existing Law

Existing law (Government Code Section 1090) prohibits Members of the Legislature, state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Existing law makes a willful violation of this prohibition a crime. Currently enforcement of this law is under the authority of the Attorney General and district attorneys. These prohibitions are outside of the Act and are not enforced by the Commission. Nor can the Commission advise public officials on Section 1090 issues, as only the Attorney General has the authority to formally advise on such matters.

#### Proposed Law

This bill would authorize the Commission to bring a civil or administrative action to enforce these prohibitions in a manner similar to that provided for under the Act. Criminal enforcement would remain with the Attorney General and district attorneys. This bill would prohibit the Commission from bringing an action against an individual if a criminal action is proceeding. The bill would also authorize the Commission to provide advice to those subject to the prohibitions of Section 1090, in a manner concurrent with the authority of the Attorney General's Office.

The Commission has a unique expertise in advising upon, investigating, and prosecuting civil ethics violations, such as conflicts of interest, under the Act. In fact, the prohibitions set forth in Section 1090 are quite similar to the conflict-of-interest prohibitions contained in the Act. Indeed, as the California Supreme Court has recognized, "Section 1090 is the principal California statute governing conflicts of interest in the making of government contracts. In turn, the Political Reform Act is the principal California law governing conflicts of interest in the making of all government decisions. It is well established that these two acts are in pari materia ...." (*Lexin v. Superior Court* (2010) 47 Cal.4<sup>th</sup> 1050, 1091). Under the Act, conflicts of interest are subject to criminal, civil or administrative prosecution. This results in accounting for the full range of conduct that can be a violation of the Act, even if the conduct does not meet the intent requirements for criminal prosecution. Section 1090 does not currently have a similar range of penalties, even though it is very similar to the Act's conflicts-of-interest provisions. This bill would bring conformity to both prohibitions. Moreover, the Commission is well-suited to assist the Attorney General and district attorneys by having civil and administrative enforcement authority over Section 1090 conflicts.

Additionally, often times, when staff is advising or investigating public officials, a potential 1090 issue is spotted in the fact pattern. However, because Section 1090 falls outside the Act, staff is forced to simply refer the individual or the matter to either the Attorney General or district

attorney. Staff is informed that individuals are often unable to obtain timely advice regarding Section 1090 issues. Staff believes that authorizing the Commission to formally and informally advise officials on Section 1090 matters would bring much needed clarity to this area of the law and enable public officials to more effectively carry out their public duties. Staff further believes that authorizing the Commission to bring civil or administrative actions under Section 1090 would result in more enforcement and, ultimately, more compliance with Section 1090, thus ensuring public officials conduct the public's business free from improper personal financial interests.

**Status: Senate pending referral.**

**Commission Adopted Position: Sponsor.**

**Fiscal Impact: Minor and absorbable.**

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